U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 2 9 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Acting Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a provider of physical and occupational therapy and speech language pathology services. It seeks to permanently employ the beneficiary in the United States as a speech language pathologist pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on June 5, 2012. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed at the Department of Labor (DOL) on February 13, 2012 (the priority date of the instant petition), and certified by the DOL on May 2, 2012. The ETA Form 9089 specifies that the minimum requirements for the proffered position are a master's degree in speech language pathology or a foreign educational equivalent, 12 months of experience in the job offered, and eligibility for a speech language pathologist (SLP) license in the State of California.

As evidence of the beneficiary's educational credentials the petitioner submitted photocopies of the beneficiary's academic records from India showing that he was awarded the following degrees:

- A Bachelor of Science in Speech and Hearing from [redacted] on January 31, 2004, following completion of a three-year degree program.
- A Master of Science in Speech-Language Pathology from the [redacted] on January 16, 2006, following completion of a two-year degree program.

As evidence of the beneficiary's qualifying work experience the petitioner submitted a letter from the COO (Chief Operating Officer) of [redacted] California, dated October 6, 2010, stating that the beneficiary was employed as a speech language pathologist from December 1, 2007 to August 31, 2010, and describing his job duties.

The petitioner also submitted copies of the beneficiary's license documentation showing that he was issued a license as a Speech-Language Pathologist by the State of California on [redacted]

On September 10, 2012, the Director denied the petition on the ground that the beneficiary did not have the requisite education as specified in the ETA Form 9089 (labor certification). The decision relied primarily on the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which indicated that the beneficiary's combined degrees in India were comparable to a bachelor's degree in the United States. The Director referred to an evaluation of the beneficiary's academic credentials from Educational Credential Evaluators, Inc. which concluded that the beneficiary's two degrees were equivalent to a U.S. bachelor's degree and a U.S. master's degree, respectively, in speech pathology, but determined that the evaluation was outweighed by the information in EDGE. The Director indicated that the beneficiary could qualify as an advanced degree professional as defined in 8 C.F.R. § 204.5(k)(2) based on his foreign equivalent to a U.S. bachelor's degree in speech language pathology and five years of progressive experience, but determined that the beneficiary would still not qualify for the proffered position because the labor certification specifies that a master's degree is required, with no provision for the alternate combination of a bachelor's degree and five years of experience.

The petitioner filed a timely appeal, accompanied by a brief from counsel and supporting documentation. Counsel asserts that the Director did not consider all of the evidence submitted by the petitioner in support of its contention that the beneficiary's Indian education is equivalent to a U.S. master's degree, and improperly relied on a single database (EDGE). In particular, counsel claims that the Director failed to address the beneficiary's license from the State of California and other certifications from state and national governing authorities. According to counsel, all of these credentials require a master's degree in speech language pathology. In addition, counsel argues that the Director gave short shrift to the academic equivalency evaluation(s) in the record, and ignored binding international obligations of the United States. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The issues before the AAO are the following:

- Does the beneficiary have the requisite credentials to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act?

- Does the beneficiary have the requisite credentials to qualify for the job of speech language pathologist under the terms of the labor certification?

Is the Beneficiary Eligible for the Classification Sought?

As previously discussed, the ETA Form 9089 in this case is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act, 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[1] This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum

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[1] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple*

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[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Investor Fund, L.P., 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[3]

As previously discussed, the documentation of record shows that the beneficiary earned two educational degrees in India: (1) a three-year Bachelor of Science in Speech and Hearing from [redacted] on January 31, 2004, and (2) a two-year Master of Science in Speech-Language Pathology from the [redacted] on January 16, 2006.

As evidence that the Indian master's degree is equivalent to a U.S. master's degree, counsel cites the beneficiary's licensure by the State of California's Speech-Language Pathology and Audiology Board (SLPAB) on August 13, 2009, which was predicated on his fulfillment of state requirements that include possession of "at least a master's degree in speech-language pathology or audiology from an educational institution approved by the board or qualifications deemed equivalent by the board." California's Business and Professions Code, Section 2532.2(a). The regulatory language quoted above, however, indicates that a master's degree may not be an absolute requirement for licensure by the SLPAB. The California state regulations provide that "qualifications deemed equivalent by the [SLPAB]" could also suffice, without further specification. It seems entirely possible that educational coursework amounting to less than a master's degree in combination with work experience in speech language pathology or audiology could be "deemed equivalent" by the SLPAB to a master's degree in the field. In this case, the record indicates that the beneficiary had several years of post-educational experience as a speech therapist and audiologist before he was licensed by the SLPAB. Accordingly, the AAO does not agree with counsel's claim that the beneficiary's licensure in the State of California necessarily means that the SLPAB accepted his master's degree from India, standing alone, as equivalent to a U.S. master's degree.

Even if the AAO did agree with the petitioner's claim that the SLPAB regarded the beneficiary's degree from the [redacted] as equivalent to a U.S. master's degree, it would not be dispositive in this proceeding because a ruling by a state entity is not binding on the AAO in its interpretation of a federal statute or regulation. The AAO is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the federal circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or

[3] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

widely circulated). Even internal memoranda of U.S. Citizenship and Immigration Services (USCIS) do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.") Therefore, the beneficiary's licensure by the State of California has no bearing on the AAO's determination, in the context of this immigrant visa petition, of whether the beneficiary's foreign education is equivalent to a U.S. master's degree.

The same applies to the beneficiary's Certificate of Clinical Competence in Speech-Language Pathology (CCC-SLP), approved by the American Speech-Language Hearing Association (ASHA), effective March 30, 2010. A website extract of ASHA, cited by counsel, states that applicants for certification must have a master's or doctoral or other recognized post-baccalaureate degree from a regionally accredited institution of higher education or a foreign institution with similar accreditation or recognition. Regardless of its requirements for certification, ASHA rulings are not binding on the AAO in its interpretation of a federal statute or regulation. As discussed above, the AAO is only bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the federal circuit court of appeals from whatever circuit that the action arose. ASHA rulings on certification applications do not fall within one of those categories.

Counsel cites the beneficiary's certification on October 26, 2007 by the International Commission on Healthcare Professionals (ICHP), a division of the Commission on Graduates of Foreign Nursing Schools (CGFNS), as having "met all of the requirements of section 212(a)(5)(C) of the Immigration and Nationality Act, as specified in Title 8, Code of Federal Regulations section 212.15(f) for the Profession of: Speech-Language Pathologist." The statutory provision cited above provides that a health-care worker seeking to enter the United States must present a certificate from the CGFNS verifying, among other things, that his or her education "meet[s] all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application." Section 212(a)(5)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(5)(C)(i)(I). The regulatory provision cited above provides that an organization authorized to issue health care certificates must verify, among other things, that the alien's education "meet[s] all applicable statutory and regulatory requirements for admission into the United States. **This verification is not binding on the DHS.**" (Emphasis added.) 8 C.F.R. § 212.15(f).

As the limitation in the regulation makes clear, the AAO, as part of the Department of Homeland Security, is not bound by any verification by the ICHP/CGFNS regarding an alien's educational credentials. Thus, even if the ICHP certificate stated that the beneficiary's Indian master's degree was equivalent to a U.S. master's degree, it would have no legal consequence for the AAO in its adjudication of the instant petition. In fact, the certificate does not indicate that the ICHP/CGFNS viewed the beneficiary's master's degree from the [redacted] as comparable to a U.S. master's degree. Compliance with the statutory and regulatory provisions cited in the certificate does not require an alien to have a master's degree (U.S. or foreign equivalent), since classification as an "advanced degree professional" can be met with a bachelor's degree (U.S. or foreign equivalent) and five years of progressive experience in the specialty. While this combination of education and experience is

considered equivalent to a master's degree under the regulatory definition of "advanced degree professional" in 8 C.F.R. § 204.5(k)(2), it does not comport with the labor certification in this case, which requires a master's degree without any experience component.

Counsel cites a USCIS memorandum in 2009 on how to determine whether a foreign medical degree is equivalent to a U.S. medical degree, and asserts that its methodology should guide USCIS in determining the U.S. equivalency of foreign master's degrees in speech language pathology as well. The 2009 memorandum states that approval of a petition for a physician seeking EB2 (advanced degree professional) classification hinges on whether the physician (at the time the labor certification application is filed) possesses a permanent license to practice medicine in the area of intended employment. Applying this guideline to speech language pathologists seeking EB2 classification, counsel claims that the requirements of the California state licensing authority – SLPAB – should be respected by USCIS in the adjudication of the instant petition. Once again, however, rulings by a state entity are not binding on the AAO in its interpretation of a federal statute or regulation. Moreover, as previously discussed, the pertinent regulatory language in California seems to indicate that a master's degree in speech language pathology may not be an absolute requirement for licensure by the SLPAB. *See* California's Business and Professions Code, Section 2532.2(a).

The record includes two evaluations of the beneficiary's academic credentials – one by the aforementioned Education Credentials Evaluations, Inc. (ECE) in Milwaukee, Wisconsin, dated February 21, 2008, and the other by International Education Research Foundation, Inc. (IERF), dated April 17, 2008. Counsel calls them course-by-course evaluations, but they are little more than copies of the beneficiary's transcripts. They contain no substantive analysis of the course content of the beneficiary's two degree programs vis-à-vis U.S. degree programs, nor any explanation as to how the "U.S. credits" or "semester units" which ECE and IERF assigned to the courses in the beneficiary's two-year master's degree program were derived from the Indian transcript, which contains totally different categories and values. Perhaps mindful that U.S. baccalaureate degrees are generally four-year programs, neither ECE nor IERF rates the beneficiary's three-year bachelor's degree at [redacted] as equivalent to a U.S. bachelor's degree. Nevertheless, ECE and IERF both evaluate the three years of study at [redacted] and the two years of study that followed at the [redacted] as equivalent to a U.S. bachelor's degree and a U.S. master's degree in speech language pathology. Absent the essential building block of a U.S.-equivalent bachelor's degree, however, the conclusions of ECE and IERF that the beneficiary has the equivalent of a U.S. master's degree – based on five years of university study in India culminating in a two-year Master of Science – are fundamentally flawed.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For the reasons discussed above, the AAO determines that the evaluations of ECE and IERF have little probative value. They are not persuasive evidence that the beneficiary's Indian credentials – the three-year bachelor's degree and the two-year master's degree in speech

language pathology – are comparable, in combination, to a U.S. bachelor's degree and a U.S. master's degree in that field.

Like other USCIS offices, the AAO consults the database (EDGE) created by AACRAO as a resource to evaluate the U.S. equivalency of foreign degrees. According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[4] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[5]

EDGE states that a Bachelor of Science degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (comparable to a U.S. high school diploma), with the great majority being awarded after three years of tertiary study. The Indian degree is comparable to study at a U.S. college or university for the same number of years. According to EDGE, therefore, the beneficiary's three-year bachelor's degree from [redacted] is most likely comparable to three years of study at a U.S. college or university. EDGE also states that a Master of Science degree in India is awarded upon completion of two years of study beyond the three-year bachelor's degree, and is comparable to a bachelor's degree in the United States. Therefore, the beneficiary's two-year master's degree from [redacted] is most likely comparable to a bachelor's degree from a U.S. college or university.

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[4] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[5] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

The petitioner challenges the AAO's utilization of AACRAO's EDGE as a resource, characterizing it as an inappropriate preferential endorsement of its education evaluation service over other credential evaluation services. The AAO does not agree. In reviewing this petition, the AAO has not relied on an evaluation by AACRAO of the beneficiary's specific educational credentials. Rather, it has utilized information from AACRAO's database – EDGE – that has been vetted by a panel of experts and has general applicability to all bachelor of science and master of science degrees in India. The evaluations from ECE and IERF submitted by the petitioner, on the other hand, focus exclusively on the beneficiary's degrees. As previously discussed, they are both substantively and analytically deficient. The AAO considers EDGE to be a more reliable resource than ECE and IERF in this instance.

The petitioner asserts that the United States, as a member of UNESCO (United Nations Educational Scientific and Cultural Organization) is bound by its General Conference's Recommendation on the Recognition of Qualifications, as well as by the Lisbon Convention of July 1, 2003, a UNESCO convention on the international recognition of foreign educational credentials. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. *See* http://portal.unesco.org/en/ev.php-URL_ID=13142&URL_DO=DO_TOPIC&URL_SECTION=201.HTML (accessed March 21, 2013). Thus, the petitioner's claim that the United States is bound by a UNESCO convention on the recognition of foreign degrees has no merit.

According to the petitioner, the United States has signed and ratified the Lisbon Convention, which entered into force in the United States on July 1, 2003. The petitioner is mistaken. While the United States did sign the Convention on November 4, 1997, the Convention has never been ratified by the United States and it has not entered into force in the United States. *See* http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=8&DF=21/03/2013&CL=ENG (accessed March 21, 2013). Moreover, the Convention does not bind the signatory states to any particular outcomes in assessing the equivalency of foreign education. Rather, it commits the signatories to certain standards and procedures in evaluating foreign educational credentials, while reserving the ultimate decision-making power in the signatory states. *See* http://conventions.coe.int/Treaty/en/reports/Html/165.htm (accessed March 21, 2013).

For all of the reasons discussed in this decision, the AAO determines that the petitioner has failed to establish that the beneficiary has a foreign equivalent degree to a U.S. master's degree in speech language pathology. In accord with EDGE's credential advice, the AAO concludes that the beneficiary's education is more likely than not comparable to a U.S. bachelor's degree in speech language pathology. Accordingly, the beneficiary is not eligible for classification as an advanced degree professional based on his educational degree(s).

While a bachelor's degree and five years of progressive experience in the specialty would also meet the definition of an advanced degree, the evidence of record does not show that the beneficiary has the requisite five years of post-baccalaureate experience prior to starting work with the petitioner in September 2011.[6] While the letter from [redacted] documents two years and nine months of qualifying experience, there is no letter from the other former employer listed in the ETA Form 9089 – [redacted] – to corroborate the beneficiary's claimed employment from September 2010 to September 2011. Even if there were such a letter in the record, the beneficiary's employment experience prior to starting work with the petitioner would still fall well short of five years. Thus, even if the labor certification allowed for an alternate combination of education and experience, the record does not establish that the beneficiary has the requisite level of both education and experience to be eligible for classification as an advanced degree professional.

Thus, the beneficiary does not have the requisite credentials to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. Accordingly, the petition cannot be approved.

2. Is the Beneficiary Qualified for the Job Offered?

To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

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[6] The ETA Form 9089 (Part J, line 21) states that the beneficiary did not gain any qualifying experience with the employer (petitioner) in a substantially similar position to the job offered.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found in ETA Form 9089, Part H. This part of the application describes the terms and conditions of the job offered. It is important that the application be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

On the ETA Form 9089 the petitioner specified the following requirements for the speech language pathologist:

- The minimum educational requirement is a master's degree or a "foreign educational equivalent" in speech language pathology (Part H, line 4, 4-B, and 9).
- 12 months of experience in the job offered is required (Part H, line 6).
- No alternate combination of education and experience is acceptable (Part H, line 8).

- Eligibility for a license in speech language pathology from the State of California is required (Part H, box 14).

While the beneficiary has the requisite experience and a license from the State of California, he does not have the requisite educational degree because his master's degree from India is not equivalent to a U.S. master's degree in the field. Therefore, the beneficiary does not satisfy the minimum educational requirement of the labor certification to qualify for the proffered position. For this reason as well, the petition cannot be approved.

Conclusion

The petition is deniable on two grounds:

1. The beneficiary does not have the requisite educational degree – specifically, a U.S. master's degree or a "foreign equivalent degree" – to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

2. The beneficiary does not qualify for the proffered position of speech language pathologist under the terms of the labor certification because he does not have the requisite educational degree – specifically, a U.S. master's degree or a "foreign educational equivalent."

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.